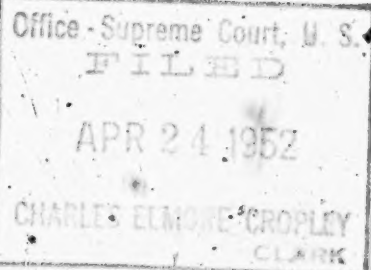


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SUPREME COURT, U.S.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. ~~670~~ 32

CLYDE BROWN,

Petitioner,

vs.

ROBERT A. ALLEN, WARDEN, CENTRAL PRISON OF THE
STATE OF NORTH CAROLINA, RALEIGH, NORTH CAROLINA,

Respondent

BRIEF FOR PETITIONER

HERMAN L. TAYLOR,
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Raleigh, North Carolina.

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CLYDE BROWN,

Petitioner,

vs.

ROBERT A. ALLEN, WARDEN, CENTRAL PRISON OF THE
STATE OF NORTH CAROLINA, RALEIGH, NORTH CAROLINA,

Respondent

BRIEF FOR PETITIONER

Opinions Below

The opinion of the United States District Court for the Eastern District of North Carolina, Raleigh Division, is reported at 98 F. Supp. 866, *sub nom. Brown v. Crawford*; ¹ the opinion of the Court of Appeals for the Fourth Circuit is reported at 192 F. 2d 477.

Jurisdiction

The judgment of the Court of Appeals, affirming the order and judgment of the District Court vacating the writ of

¹ By order of the Court of Appeals for the Fourth Circuit dated October 13, 1951, Robert A. Allen, the successor to J. P. Crawford as Warden of Central Prison of the State of North Carolina, was substituted as appellee.

habeas corpus theretofore issued by said District Court, dismissing the petition for petitioner for such writ of habeas corpus, and remanding petitioner to the custody of Respondent, the Warden of the Central Prison of the State of North Carolina, wherein petitioner is an inmate of the death house, under sentence of death by asphyxiation, petitioner having previously been indicted, tried and convicted without recommendation of mercy in the Superior Court of Forsyth County, North Carolina, for the crime of rape, was rendered and entered on November 5, 1951 (R. 283-286). Petition for writ of certiorari from this Court to the Court of Appeals was thereafter timely made and certiorari was granted by order of this Court on March 24, 1952 (R. 287) (343 U.S. 903).

The jurisdiction of this Court is conferred by Section 1254(1) of Title 28 of the United States Code.

Statutes Involved

1. Section 2241, Title 28, United States Code:

“(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

.

(c) The writ of habeas corpus shall not extend to a prisoner unless— * * * (3) He is in custody in violation of the Constitution or laws or treaties of the United States.”

2. Section 2254, Title 28, United States Code:

“Any application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a state court shall not be granted unless it appears that

the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.

"An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented."

Statement of the Matter Involved

Petitioner, Clyde Brown, an illiterate Negro of about twenty years of age, was tried and convicted in the Superior Court of Forsyth County, North Carolina, of assaulting and raping a young white girl named Betty Jane Clifton. The crime was allegedly committed on the 16th day of June, 1950, and the defendant was brought before the court for trial at the September Term, 1950 of the Forsyth County Superior Court. At the time of his arraignment, and before pleading to the bill of indictment and before the selection of the jury, petitioner entered a special appearance and made a motion to quash the bill of indictment, upon the ground that the grand jury returning the indictment against the defendant was unlawfully constituted, in violation of the rights of defendant as guaranteed him under the Fifth and Fourteenth Amendments to the Constitution of the United States, in that the members of said grand jury were selected and drawn with a view and purpose of systematically limiting the representation thereon of persons of the Negro race, to which race petitioner belongs, with the result that petitioner and members of his race are unlawfully discriminated against. The issue raised by petitioner's said motion was tried upon evidence presented, and the trial judge thereafter entered an order denying said motion. Thereafter, in amplification and extension of

his motion to quash the bill of indictment, petitioner, at the termination of the trial, made a motion in arrest of judgment in which he sought to re-assert and expand the basis of his previous motion. This last motion the trial court also denied.

During the course of petitioner's trial and over his timely objection, the State was allowed to introduce into evidence statements of petitioner in the nature of confessions of commission of the alleged crime. Petitioner contended that the statements sought to be introduced as confessions were inadmissible for that they were unlawfully obtained, in violation of the guaranties of the Fourteenth Amendment to the Constitution of the United States. Upon the trial of issue thus raised, the trial court likewise overruled the petitioner's objection. Thereafter, upon trial of petitioner before a jury, he was convicted of the capital crime of rape, without recommendation of mercy, and the sentence imposed upon him was that of death by asphyxiation. This latter conviction and sentence have been upheld by the Supreme Court of North Carolina, in an opinion filed on the 2nd day of February, 1951 (*State v. Brown*, 233 N.C. 202, 63 S.E. (2d) 99).

Upon the affirmation by the Supreme Court of North Carolina of petitioner's conviction and sentence, petitioner applied to this Court for a writ of certiorari to review the decision of the Supreme Court of North Carolina, and on the 28th day of May, 1951, this Court denied petitioner's application for a writ of certiorari with the following entry:

"The petition for writ of certiorari is denied. Mr. Justice Black and Mr. Justice Douglas are of the opinion certiorari should be granted."

Subsequent to the denial of petitioner's petition for writ of certiorari by this Court, to wit, on the 21st day of June,

1951, petitioner applied to the United States District Court for the Eastern District of North Carolina, for a writ of habeas corpus, based upon Federal Constitutional grounds set out in said petition; however, on the 14th day of July, 1951, the District Court denied petitioner's petition without a hearing. Thereafter, petitioner appealed his case to the United States Court of Appeals for the Fourth Circuit, and on the 5th day of November, 1951, the said Court of Appeals for the Fourth Circuit handed down an opinion affirming the judgment of the District Court. Petitioner is presently incarcerated on death row in the State Prison of North Carolina, his execution having been stayed pending the outcome of this appeal.

| The evidence adduced by the state during petitioner's trial discloses that on Friday, June 16, 1950, at or around noon-time, one Betty Jane Clifton, a 17 year old high school student, was cruelly beaten and raped in the radio shop operated by her father, Thomas E. Clifton, on West 7th Street, in the City of Winston-Salem, North Carolina, which she was tending in absence of her father. The evidence discloses that Betty Jane Clifton was beaten about the head with a rifle butt, or some other blunt instrument; she was found in the shop in an unconscious condition and removed to a local hospital where she hovered between life and death for many days. The defendant Clyde Brown was seen in the vicinity of the radio shop close to the time of the happening of the alleged crime, and was later arrested and held for sometime for investigation in connection therewith. Various angles of his alleged connection with the crime were run down by local police officers, and after several days of detention without formal charge, petitioner allegedly confessed the commission of the crime. Upon these representations of the State, petitioner was determined by the jury's verdict to have been the perpetrator of the crime.

Questions Involved

1. Whether the District Court committed error in arbitrarily denying petitioner's application for writ of habeas corpus without taking any evidence or permitting petitioner to be heard on the substantial Federal Constitutional questions raised in his petition, and, similarly, whether the Court of Appeals was in error in upholding said action of the District Court.

2. Whether or not the facts in evidence in petitioner's trial in the Superior Court of Forsyth County, North Carolina, show that there was unlawful discrimination against persons of the Negro race in the selection and constitution of grand juries in Forsyth County, including the grand jury which indicted petitioner solely for reason of race or color, resulting in deprivation of the equal protection of the laws guaranteed petitioner by the Fourteenth Amendment to the United States Constitution, and whether or not the alleged confessions admitted in evidence were obtained as a result of fear, duress, coercion, or other unlawful circumstances, whereby the conviction of and sentence imposed upon petitioner resulted in a deprivation of his life and liberty without due process of law, in violation of the Fourteenth Amendment to the United States Constitution.

Specification of Error

The Court of Appeals for the Fourth Circuit erred in affirming the judgment of the District Court dismissing the petition for a writ of habeas corpus brought to secure petitioner's discharge from the custody of respondent.

Summary of Argument

Petitioner contends that under the law, both statutory and the decisions of this Court, the District Court was in error in denying petitioner's application for writ of habeas

corpus without a hearing on the merits of his case. Petitioner further contends that the evidence in the instant case establishes that Negroes were discriminated against in the constitution of grand and petit juries in Forsyth County, North Carolina, and that the evidence establishes that the confessions admitted into evidence against him were obtained in a manner violative of the due process of law requirement of the Fourteenth Amendment to the United States Constitution.

Argument

I

The District Court Committed Error in Denying Petitioner's Application for Writ of Habeas Corpus Without Hearing.

Petitioner applied to the District Court on the 21st day of June, 1951, for a petition for writ of habeas corpus, based upon two substantial Federal Constitution grounds, to wit, arbitrary and unlawful exclusion of members of his race from grand juries in the County of his trial, and the unlawful use of extorted confessions to secure his conviction, upon the basis of which application a show cause order was directed to the Respondent. Respondent within the time specified by the Court made a written return to said show cause order, to which was attached documentary evidence of all proceedings theretofore had in petitioner's case which return, upon its face, raised serious issues of fact. Thereafter on the 19th day of July, 1951, the Court, without having taken any evidence or held a formal hearing at which evidence was taken, issued an order summarily denying petitioner's application. It is submitted that the action of the District Court in this connection was contrary to the provision of the statutes controlling the issuance of writs of habeas corpus by federal courts and was in conflict with the decisions of this Court on the subject.

Section 2243 of 28 U.S.C.A., dealing with the issuance of such writs, returns, hearings and decisions thereon, states, without equivocation, that:

"When the writ or order is returned *a day shall be set for hearing*, not more than five days after the return unless for good cause additional time is allowed."
(Emphasis added.)

This statute seems without doubt to contemplate the taking of evidence and a hearing on the merits where a petition raises, as was done in the instant case, substantial federal questions as a basis for an application for the writ and where the return made to said petition raises issues of fact. It is sufficient, petitioner believes, to support his contention in this respect to refer to this Court's decision in *Walker v. Johnston*, 312 U.S. 275, 85 L.ed. 830. In the *Walker* case, this Court said:

"As we said in *Johnston v. Zerbst*, 304 US 458, 466, 82 L.ed 1461, 1467, 58 S.Ct 1019, 'Congress has expanded the rights of a petitioner for habeas corpus. . . . There being no doubt of the authority of the Congress to thus liberalize the common law procedure on habeas corpus . . . it results that under the sections cited a prisoner in custody . . . may have a judicial inquiry . . . into the very truth and substance of his detention. . . .' Such a judicial inquiry involves the reception of testimony, as the language of the statute shows." (85 L.ed., at 835.)

Compare *Palmer vs. Ashe, Warden*, 72 S. Ct. 191.

It is therefore submitted that the District Court committed error in summarily dismissing petitioner's application for writ of habeas corpus without the taking of any evidence or the holding of a hearing, and the Court of Appeals was in error in affirming said judgment.

Petitioner has been Deprived of the Equal Protection of the Law by the Discriminatory and Arbitrary Exclusion of Negroes From (Grand and/or) Petit Juries in Forsyth County, Solely for Reason of Race, Including the Grand Jury Which Indicted and the Petit Jury which convicted Petitioner.

There is and can be no controversy with respect to the constitutional principal herein involved, as it is one that has long been established as the fundamental law. Consequently, the only issue that usually arises in this instance is whether or not the constitutional proscription involved has been disregarded. This Court is familiar with the statutes and procedure governing the selection of grand and petit juries in the State of North Carolina. Just about two and one-half years ago this Court had occasion, in a *per curiam* opinion of one word, to reverse five convictions arising out of the State of North Carolina, on the grounds that Negroes had been systematically and arbitrarily excluded from grand and petit juries in Forsyth County, North Carolina, the very same county from which the instant proceeding comes. *Brunson v. North Carolina*, 333 U.S. 851; *Jones v. North Carolina*, *id.*; *James v. North Carolina*, *id.*; *King v. North Carolina*, *id.*; *Watkins v. North Carolina*, *id.* In each of the foregoing instances, Negroes were indicted by grand juries in Forsyth County on which there were no Negroes and under circumstances which revealed that for many years no Negroes had ever served on grand juries; also, in each instance, contrary to the instant situation, although Negroes were included on the convicting petit juries, the number of Negroes on such juries then and in the past years was disproportionately small to the number of Negroes residing in Forsyth County eligible for jury service. As has

been hereinbefore set out, the instant proceeding arises out of the same county of the State of North Carolina as the *Brunson, Jones, James and Watkins* cases, to wit, Forsyth County. It is the contention of petitioner that the situation which obtained at the time of his trial represented an attempt on the part of the jury commissioners of Forsyth County to give only token compliance to mandate of this Court as set out in the aforementioned cases; that is, instead of approaching the inclusion of qualified Negroes on grand and petit juries in Forsyth County as a matter of general and ordinary jury selection procedure, petitioner contends that the facts in evidence and the circumstances herein show that the said jury commissioners have studied and purposefully limited the number of Negroes on grand juries to no more than one or two at a given time (R. 38-39), and the number of Negroes called to serve on petit juries to no more than four or five (R. 42-44). This Court has stated, in *Cassell v. Texas*, 339 U.S. 282, 286:

"If . . . commissioners should limit proportionally the numbers of Negroes selected for grand jury service, such limitation would violate our Constitution."

And, at 287:

"Proportional racial limitation is therefore forbidden. An accused is entitled to have charges against him considered by a jury in the selection of which there has been neither inclusion nor exclusion because of race."

See also *Virginia v. Rives*, 100 U.S. 322, 323.

The United States Census for 1940 discloses that the total population of Forsyth County was, as of said census, 126,475, consisting of 41,152 Negroes and 85,323 whites, the per cent of Negroes being 32.5% of the total. This census further shows that the total number of persons in Forsyth County 21 years of age and over were 75,556, of which 25,057

are Negroes, or approximately one-third of the total. It is thus apparent from the record, and it is a fact, that the foregoing proportion of Negroes in Forsyth County has never been even remotely reflected in the proportion of Negroes who have served on juries in Forsyth County. While it is an accepted principal that proportional representation of Negroes or any other racial group on every jury is not required, *Cassell v. Texas, supra*, disproportional representation of Negroes on juries in a given community for a number of years, when considered in the light of the proportion of Negroes of the total population, is strong evidence of the violation of the rights claimed, and one would have to be unduly credulous to accept the argument that the inclusion of Negroes on jury panels in consistently and unvarying small numbers, such as one or two at a time, was solely the handiwork of chance. As this Court said in *Smith v. Texas*, 311 U.S. 128, 131:

“Chance and accident alone could hardly have brought about the listing for grand jury service of so few Negroes from among the thousands shown by the undisputed evidence to possess the legal qualifications for jury service.”

Although, the statute of the State of North Carolina (Gen. Stats. of N.C. 1943, Sec. 9-1) charges the commissioners of the several counties with the affirmative duty of resorting to the tax records of their respective counties and other sources for the purpose of fairly apprising themselves of the persons who are eligible for jury duty, the record in this case shows that the jury commissioners of Forsyth County, without further inquiry or consideration (R. 33-34, 39, 44-45), accepted as the jury panel for the period during which petitioner was indicted and tried a list of 40,000 names taken from the county tax records for the year 1948, which was tendered to them for this purpose, (R. 33-34, 44-45). At

the same time, although the commissioners admittedly knowingly failed to resort to sources other than tax records to obtain the names of persons who were qualified for jury service, although the aforementioned statute provides for the same, they sought to justify the consistent paucity of Negroes on grand and petit juries in Forsyth County upon the ground that Negroes comprise only about 16% of the taxpayers in Forsyth County (R. 39, 49). And, even if such contention be conceded, it is an accepted and a recorded fact that representation of Negroes on juries in Forsyth County has never been approximated 16% of the persons called for jury service in said County. Irrespective of the decision of the state courts on the federal right which was set up and claimed, it is the province of this Court to inquire not merely whether it was denied in express terms, but also whether it was denied in substance and effect. *Norris v. Alabama*, 294 U.S. 587, 590. Accordingly, whether a state law prescribes or does not prescribe a mode of jury selection which is designed to bring about equal protection of the laws in the administration thereof, as required by the Fourteenth Amendment, if the administrative agency which is charged with the duty of selecting juries pursues a course, either through design or ignorance, which in fact results in the arbitrary exclusion of members of a given race from such juries, an infraction of the Constitutional requirement thus results, *Neal v. Delaware*, 103 U.S. 370; *Carter v. Texas*, 177 U.S. 442.

It appears as a matter of deduction from the record that no Negro served on the trial jury which convicted petitioner (R. 27), and it further appears from the record that only one Negro was on the indicting grand jury (R. 40-41), in continuing observance of what petitioner contends is a studied and purposeful program of limiting the number of Negroes on grand and petit juries in Forsyth County. It is unquestioned that indictment and conviction of a Negro by a grand

and petit jury from which Negroes have been purposefully excluded solely for reasons of race deprives that defendant of equal protection of the laws. *Strauder v. West Virginia*, 100 U.S. 303; *Neal v. Delaware*, *supra*; *Bush v. Kentucky*, 107 U.S. 110; *Norris v. Alabama*, *supra*; *Hale v. Kentucky*, 303 U.S. 613; *Pierre v. Louisiana*, 306 U.S. 354; *Smith v. Texas*, *supra*; *Hill v. Texas*, 316 U.S. 400; *Patton v. Mississippi*, 332 U.S. 463; *Brantson et al v. North Carolina*, *supra*. Purposeful exclusion is shown even where some Negroes do serve as jurors if the proportion of Negroes on juries is infinitesimal in comparison with the proportion of Negroes in the community eligible to act as jurors. *Pierre v. Louisiana*, *supra*; *Smith v. Texas*, *supra*. The essential inquiry is not whether Negroes are proportionally represented on any one jury, but whether a historical pattern of Negro participation on juries demonstrates deliberate exclusion. *Patton v. Mississippi*, *supra*; *Akins v. Texas*, 325 U.S. 398. It is submitted, therefore that the facts in this case and the applicable law forcefully demonstrate that petitioner was denied equal protection of the laws in this instance and that the state courts committed error in denying his motion to quash the bill of indictment and the trial jury panel.

III

The Conviction of Petitioner Deprives Him of His Life and Liberty Without Due Process of Law in View of the Admission Into Evidence of His Alleged Confessions.

The alleged assault and rape of the prosecuting witness, Betty Jane Clifton, a young high school girl, occurred on June 16, 1950. The defendant, Clyde Brown was reported by witnesses for the state to have been seen in the vicinity of the radio shop in which the incident occurred at or around the time of its alleged occurrence (R. 76 *et seq.*). The petitioner was arrested without a warrant and held for ques-

tioning in connection with the crime at or around 12:30 a.m. on the morning of June 19th (R. 87-88). The undisputed evidence is that the defendant was held in custody until the 24th day of June, 1950, before he was formally charged with the commission of the crime and was not given a preliminary hearing in connection therewith until the 7th day of July, 1950, more than 18 days after his apprehension. (R. 87 *et seq.*). It is also undisputed that during the time he was held in custody, the defendant was questioned repeatedly and persistently by police officers of the City of Winston-Salem in relays until they succeeded in obtaining from petitioner the sort of confession they desired (R. 87 *et seq.*). Although the officers contended that they warned petitioner of his rights, they made no effort to obtain counsel for petitioner until they had carried him through a searing inquisition and he had given them the incriminating statements.

General Statutes of North Carolina, 1943, Sec. 15-46 provides:

"Every person arrested without warrant shall be either immediately taken before some magistrate having jurisdiction to issue a warrant in the case, or else be committed to the county prison, and, as soon as may be, taken before such magistrate who, on proper proof, shall issue a warrant and thereon proceed to act as may be required by law."

Although specifically enjoined so to do by the foregoing statutory provision, as has been hereinbefore set out, the officers who took petitioner into custody held him from the 19th day of June until the 24th day of June, a period of 5 days, without formally charging him with crime, and from the 19th day of June until the 7th day of July, a period of about eighteen days, before granting him a preliminary hearing (R. 89-91). It is thus apparent that during the time petitioner was continually questioned and at the time the

incriminating statements were elicited, he was being detained in violation of the laws of the State of North Carolina.

While the officers who had petitioner in custody contended that they advised him of his right, including the right to consult with counsel, it is apparent from the record, as aforesaid, that counsel was not made available to petitioner until after the incriminating statements had been made. In determining whether or not the warning allegedly given petitioner, even if it should be conceded that such a warning was given, meets the requirements of due process, it is submitted that this Court should take into consideration as a part of the circumstances the lack of intelligence on the part of the defendant as will certainly be revealed from a careful perusal on the whole record. A bald statement by officers to one of petitioner's intelligence and background in a situation of this kind that he has certain rights, knowing that he is in no position to avail himself of such rights without the affirmative help of his admonishers, it is submitted, becomes a vain and useless act. Petitioner does not contend that the incriminating statements were obtained through physical violence, but he does contend that they were induced by the coercive circumstances set out in the record, and as such are similarly inadmissible.

Since *Brown v. Mississippi*, 297 U.S. 278, it has been the undeviating practice of this Court to reverse convictions after trials in which there was admitted into evidence confessions induced by physical and mental coercion. *Chambers v. Florida*, 309 U.S. 227; *Canty v. Alabama*, 309 U.S. 629; *White v. Texas*, 309 U.S. 631; *id.*, 310 U.S. 530; *Lomax v. Texas*, 313 U.S. 544; *Vernon v. Alabama*, 313 U.S. 547; *Ward v. Texas*, 316 U.S. 547; *Ashcraft v. Tennessee*, 322 U.S. 143; *id.*, 327 U.S. 274; *Malinski v. New York*, 324 U.S. 401; *Haley v. Ohio*, 322 U.S. 596; *Lee v. Mississippi*, 322 U.S. 742; *Watts v. Indiana*, 338 U.S. 49; *Turner v. Pennsylvania*,

330 U.S. 62; *Harris v. South Carolina*, 338 U.S. 68. In view of the fact that it is apparent from the record that, aside from the alleged confessions, a conviction of petitioner would have to rest upon flimsy and doubtful circumstantial evidence, it is submitted that it is particularly appropriate for this Court to review the facts herein to determine independently whether they spell out the type and sort of coercion which the foregoing authorities have determined to be unlawful.

Ward v. Texas, 316 U.S. 547, 555, provides the point of departure for evaluating the undisputed and uncontradicted evidence which exists in this case, for in that case BYRNES, J., stated the applicable criteria:

"This Court has set aside convictions based upon confessions extorted from ignorant persons who have been subjected to persistent and protracted questioning, or who have been threatened with mob violence, or who have been unlawfully held incommunicado without advice of friends or counsel, or who have been taken at night to lonely and isolated places for questioning. *Anyone one of these grounds would be sufficient cause for reversal.*" (Emphasis added).

The youthful age of petitioner (*Chambers v. Florida*, *supra*; *Haley v. Ohio*, *supra*); his illiteracy (*Harris v. South Carolina*, *supra*; *White v. Texas*, *supra*); the brutality of the crime involved (*Chambers v. Florida*, *supra*; *Ward v. Texas*, *supra*); his detention without hearing or arraignment. (*Harris v. South Carolina*, *supra*; *Turner v. Pennsylvania*, *supra*; *Watts v. Indiana*, *supra*; *Haley v. Ohio*, *supra*), and without any communication with friends or counsel (*Harris v. South Carolina*, *supra*; *Ashcraft v. Tennessee*, *supra*; *White v. Texas*, *supra*; *Chambers v. Florida*, *supra*); and the harrowing questioning which led up to the alleged confessions, all combined to make those confessions tainted and constitutionally inadmissible.

It is well settled that even where proof apart from a confession in evidence might be deemed sufficient to found a conviction, although, as aforesaid, such is not the case here, such proof will not influence the necessity of reversing a judgment of conviction where the confession was involuntary or coerced. *Haley v. Ohio, supra*, at 599; *Malinski v. New York, supra*, at 404.

It is submitted, therefore, that the state courts erred in admitting said confessions in evidence.

IV

The Writ of Habeas Corpus Should Have Issued in the Instant Case.

For the reasons set out in Sections two and three of the argument herein, the writ of habeas corpus sought by petitioner from the District Court should have been issued by said Court.

Conclusion

Petitioner submits, therefore, that on the law and facts herein obtaining, the District Court was in error in denying his petition for writ of habeas corpus, and the Court of Appeals was in error in affirming said ruling, and that, therefore, the rulings of said courts should be reversed.

Respectfully submitted,

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